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October 26, 2001

EXECUTIVE SECRETARY

David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

IN RE: *In the Matter of Notice of Rulemaking Amendment of Regulations for
Telephone Service Providers*
Docket No. 00-00873

Dear Mr. Waddell:

Please accept for filing the original and thirteen copies of Comments filed on behalf of XO Tennessee, Inc., and the Southeastern Competitive Carriers Association in the above-captioned proceeding. Copies have been forwarded to parties.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By:

Henry Walker
Henry Walker *nx*

HW/nl
Enclosure

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE: IN THE MATTER OF)	
RULEMAKING AMENDMENT OF)	
REGULATIONS FOR TELEPHONE)	DOCKET NO. 00-00873
SERVICE PROVIDERS)	

**SEPARATE COMMENTS SUBMITTED BY THE SOUTHEASTERN COMPETITIVE
CARRIERS ASSOCIATION AND XO TENNESSEE, INC.**

For reasons explained below, the Southeastern Competitive Carriers Association ("SECCA") and XO Tennessee, Inc. ("XO") do not agree with the "Industry Consensus" position regarding two of the proposed, amended rules: the rule on directory covers and the rule requiring carriers to provide soft dial-tone up to 15 days after the termination of service.

I. Proposed Rule 1220-4-2-7:

The cover of the directory shall include the area covered in the directory and the month and year of the issuance of or the intended life of the directory. Information pertaining to emergency calls to the police and fire departments, as well as a description of E911 emergency services, shall appear conspicuously in the front section of the directory.

COMMENTS:

The proposed, amended rule reflects a recent decision of the Tennessee Court of Appeals regarding the contents of directory covers. The decision overturned two TRA orders which were based on the language of the current rule. The Court's decision, however, is not yet in effect and may never become effective. Pursuant to the Tennessee Rules of Appellate Procedure, the issuance of the mandate by the Court of Appeals has been suspended pending review of the decision by the Tennessee Supreme Court.¹ Therefore, until the Supreme Court has ruled, the present rule should not be amended. After the Court has ruled, the Authority should change the directory cover rule as necessary to comply with the Court's opinion.

¹ AT&T and MCI WorldCom concur in the objection to the proposed rule on directory covers. Both carriers are participating, along with XO, in the Supreme Court appeal.

II. Proposed Rule 1220-4-2-.07(2)(d):

The provider of local service shall provide a soft dial-tone to the customers for fifteen (15) days following cessation of service or until the customer selects another provider of local service whichever is less.

COMMENTS:

This rule should be eliminated, at least as it applies to CLEC providers. In effect, the rule adds fifteen (15) days to the minimum thirty (30) day time period for cancellation of local service and it illegally requires carriers to continue providing service without compensation.

During the past year, several CLECs have decided, for financial reasons, to cease providing service in Tennessee. In some cases, the carrier is simply consolidating its service in fewer states. In other cases, the carrier has ceased doing business altogether. In either case, the carrier is typically in a situation where it is losing money every day it continues to provide service. Adding an additional fifteen days to the existing thirty (30) day notice requirement only adds to the carrier's economic burden.

Second, the proposed rule requires that "soft dial-tone" be provided to customers whose service has been terminated. Therefore, the carriers would be required to provide that service for free. As a matter of law, the TRA has no statutory authority to order a carrier to continue to provide service to a customer after the service has been terminated and the carrier/customer relationship no longer exists. The Tennessee Court of Appeals has held that, where no customer/company relationship exists, the TRA cannot order a carrier to provide service without compensation. See *AT&T v. Cochran*, Tenn. Ct. App. (April 26, 1995) and Attorney General Opinion No. 01-115 (July 20, 2001).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via U.S. Mail, postage prepaid, to the following on this the 26th day of October, 2001.

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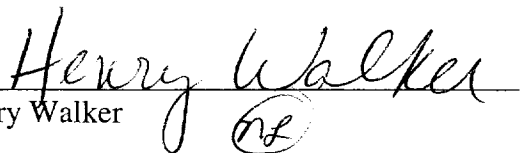
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